



General Terms and Conditions of Business

General Terms and Conditions of Business of VdS Schadenverhütung GmbH for the provision of testing and certification services

1 Area of application

1.1 These General Terms and Conditions of Business („General Terms“) apply to the testing and certification services of VdS Schadenverhütung GmbH (hereinafter, „VdS“ or „we“), to the extent that, in the corresponding procedural guidelines, reference is made to these General Terms.

1.2 Unless otherwise agreed in individual cases, contracts are entered into with us only in accordance with the provisions of these General Terms and the corresponding procedural guidelines. Upon issuing an order, the customer agrees to our General Terms and the corresponding procedural guidelines. Any contrary or deviating terms and conditions of the customer are binding on us only if we have acknowledged them expressly and in writing. Our General Terms also apply if, in knowledge of any contrary or deviating terms and conditions of the customer, we perform our service without reservation.

1.3 In respect of business owners, legal entities under public law and entities with special funds under public law, our General Terms also apply to all future business relationships.

2 Conclusion of a contract

2.1 A contract is deemed to be concluded with us only if the customer accepts our offer without any reservation, or if the customer has received our written order confirmation. If we issue a written order confirmation, this is controlling for the content and scope of the contract, unless otherwise expressly agreed.

2.2 Any amendment, side agreement or supplement requires our confirmation for its effectiveness.

2.3 Any order to perform a test, approval, certification or evaluation of conformity comprises solely the services described in the corresponding procedural guidelines. The procedure does not include any examination of the general freedom from defects, or the fitness of the product or the service provided by the customer. Accordingly, we assume no warranty for the correctness and functioning, or for any other freedom from defects, of the tested products or other goods and/or services of the customer. Our liability is limited to the orderliness of the test, approval, certification and confirmation of conformity procedures. This shall not apply to the extent that we are liable in accordance with Section 8.

3 Carrying out of the order and duties to cooperate of the customer

3.1 All documents and information that we receive in connection with carrying out an order will be kept strictly confidential. Without the customer's written consent, such documents will not be made accessible to any third party. This shall not affect the obligation of VdS to grant access to the documents, for individual transactions, to superior authorities, such as representatives of accreditation authorities.

3.2 Advice and relevant information will be obtained from third parties only with the customer's written consent, unless there is a contractual relationship with any such third party that guarantees secrecy in the interest of the customer.

3.3 The customer is aware that, for the proper provision of our services, we may have to damage or destroy the items delivered by the customer for tests, approval, certification or evaluation of conformity. As such, we do not provide any replacement for damages to or destruction of the customer's items as a consequence of properly performing our service. The transport and (if applicable) return transport of the customer's items takes place at its expense and risk. However, return transport is only performed at the express request of the customer. When storing the items, our liability is limited to normal care and diligence. If the customer does not want return transport, we shall dispose of the items at the customer's expense.

3.4 To the extent that cooperative actions on the part of the customer are required for performing our service, it must furnish these on a timely basis and at its own expense. Reimbursement will be provided for expenses only if this has been expressly agreed.

3.5 We have the right to have the services that we owe performed by a subcontractor that we have carefully selected and appears suitable to us.

3.6 If site inspections (such as audits) of the customer are provided in our certification procedure, the customer must grant us access to all necessary components of the operation. Site inspections will take place only after prior arrangement between us and the customer.

3.7 If we operate outside of our premises, the client shall be responsible for fulfilling all measures necessary to guarantee traffic safety, unless already provided for in the nature of the specific situation or otherwise agreed upon with the client. We are entitled to refuse to perform our services as long as the necessary measures have not been taken.

4 Time periods and deadlines

4.1 Time periods and deadlines that we specify are always deemed to be approximate, to the extent that a different agreement has not been expressly made in an individual case. To the extent that they are non-binding, we are only in delay if the customer has previously set for us in written form a reasonable period for furnishing the service that is owed, without any result. In any event, time periods commence only after the complete provision of all cooperative actions owed by the customer and – if an advance payment has been agreed – only after its receipt. Our performance periods will be rea-

sonably extended by any subsequent change requests or belated provision of cooperative acts on the part of the customer.

4.2 If the customer does not comply with its duties to cooperate, or does not do so properly or on a timely basis, after we have set for the customer a reasonable period for the provision of all cooperative actions owed by the customer, without any result, we shall be entitled to terminate the procedure and withdraw from the contract, and bill for the expenses that have arisen up to that point. Further legal claims are expressly reserved.

4.3 If a service that we owe is delayed due to circumstances that are unforeseen and for which we are not culpable (such as labour disputes, operational interruptions, transport obstacles, government measures – even regarding our own suppliers), we shall be entitled to withdraw from the contract, in whole or in part, or, at our option, postpone the performance for the duration of the hindrance. We shall inform the customer immediately of the non-availability of the performance or part performance and, in the event of our withdrawal from the contract, immediately reimburse it for any consideration already paid for this. Claims for damages are barred.

5 Prices

5.1 The prices that we state are subject to the addition of applicable statutory turnover tax. To the extent that it is incurred, turnover tax is billed separately.

5.2 We are bound to the prices stated in our offers for three months. The period commences with delivery of the offer, and ends with the conclusion of the contract in accordance with Section 2.1 of these General Terms.

5.3 If no fixed price has been agreed and it turns out that, upon the performance of a service, the costs will exceed the amount estimated for the customer by more than 10%, we shall provide notification of this. In such an event, analogously to § 649 of the German Civil Code (Bürgerliches Gesetzbuch, „BGB“), the customer shall be entitled to terminate the contract. At that point, we shall bill for the services provided up to such point in time. The same shall apply if we withdraw from the contract for good cause, or if the contract is rescinded by mutual agreement. If the good cause for a withdrawal from the contract that we exercise is the result of a breach of a duty on the part of the customer, we reserve the right to assert claims for damages.

6 Payment terms

6.1 Our invoices are to be paid – without deduction of cash discount and free of additional expenses – in accordance with the agreed schedule of payment, otherwise within two weeks of the date of the invoice. We reserve the right to demand reasonable payments on account and advances.

6.2 The customer shall be entitled to set-off rights only if its counterclaims are legally established, undisputed or acknowledged by us.

6.3 If, after the conclusion of a contract, it becomes evident that our claims against the customer are at risk due to a lack of ability to perform on the part of the customer, we shall be entitled to render services that are still outstanding only against prepayment or the provision of security, and withdraw from the contract after the expiration (without any result) of a grace period set for this purpose.

6.4 In the event of a default in payment, the customer shall owe default interest in the amount arising from § 288 of the BGB, unless we can prove higher damages to the customer. In addition, we shall be entitled to charge a flat-rate fee of €5 for each reminder that takes place after the delay.

7 Claims for defects, appeals and complaints

7.1 If we have provided a deficient service, the customer must give us the opportunity to provide at least two subsequent improvements within a reasonable period, unless this is unreasonable in the individual case or there are special circumstances that, under the weighing of the interests of both parties, justify an immediate withdrawal on the part of the customer. Claims for damages will exist only in accordance with Section 8.

7.2 Any appeals to decisions of the certification body must be addressed in writing by the appealing party to the head of the VdS certification body. The submission of, examination of and decision regarding appeals will not lead to any disadvantage for the appealing party. The receipt of the appeal will be confirmed in writing. If necessary and appropriate for the proceedings, the appealing party will receive written progress reports and a summary report for the formal conclusion of the appeal proceedings.

7.3 Any complaints against the activities of the certification body or a certified customer must be addressed in writing by the complaining party to the head of the VdS certification body. The receipt

of the complaint will be confirmed in writing. If possible, necessary and appropriate for the proceedings, the complaining party will receive written progress reports and a summary report for the formal conclusion of the complaint proceedings. If the head of the VdS certification body confirms the decision of the certification body, an appeal may be made to a grievance committee appointed by the VdS certification advisory board.

8 Liability

For losses that have not occurred in the damaging of the subject matter of a contract through the proper provision of our services, we shall be liable – regardless of the reason – only

- a. in the case of an intentional act,
- b. in the case of gross negligence,
- c. in the case of a culpable injury to life, body or health,
- d. in the case of defects that have been fraudulently concealed, or the absence of which was guaranteed.

Upon a culpable violation of a material contractual obligation, thus such an obligation, the fulfillment of which the customer regularly relies on and may rely on for the proper carrying out of the contract, we shall also be liable for ordinary negligence; in the latter case, this shall be limited to damages that are typical for contracts and reasonably foreseeable.

The preceding liability provisions apply to both our own culpability and the culpability of our vicarious agents. Any liability going beyond this is barred. The preceding liability limitation also applies for the benefit of the personal liability of employees and vicarious agents of VdS.

9 Data protection and publication of the certification result

9.1 In performing contractual services, we ensure that there is compliance with the provisions of § 5 of the German Federal Data Protection Act (Bundesdatenschutzgesetz). For the purpose of carrying out an order, data of the customer will be collected, stored and (if applicable) forwarded to third parties. Any forwarding takes place only to the extent that this is necessary for carrying out an order. The customer hereby declares its consent to this.

9.2 We publish positive certification results in the form of printed lists and on the Internet under vds.de. The certificate holder agrees that the following data, to the extent applicable for the procedure, will be published during the period of validity of the certificate:

- VdS certificate or approval number
- certificate holder with complete address
- name of the certified service, product or management system, including classification, regional limitations and technical limitations
- technical data of products
- upon request, telephone and fax number, e-mail address and URL of the customer website.

9.3 We reserve the right to publish certificates that have been withdrawn for serious reasons, under the use of the data referred to in Section 9.2 and the designation of the reasons for withdrawal.

10 Applicable law and area of jurisdiction

10.1 The substantive law of the Federal Republic of Germany, to the exclusion of any conflict of laws, applies.

10.2 If the customer is a trader, legal entity under public law or entity with special funds under public law, the area of jurisdiction for all actions arising from or in connection with these General Terms and the contract concluded with the customer is Cologne.

11 Concluding provisions

If an individual provision of these General Terms is or becomes ineffective, this shall not affect the effectiveness of the remaining provisions.

